IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5366 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DILIP LAKHMANBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5366 of 2003

MR JOSHI FOR M/S THAKKAR ASSOC. for Petitioner No. 1

MR RC KODEKAR, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 29/07/2003

ORAL JUDGEMENT

The detenu has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the

order dated 25-2-2003 passed by the District Magistrate, Rajkot and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner at length and learned AGP for the respondents. I have also perused the material on record. Learned advocate for the petitioner has mainly concentrated his arguments mainly on the delay in deciding the representation and communicating to the detenu. The only contention raised by him is that petitioner has made a representation through his advocate on 4-3-2003, same has been sent to the State Government by the detaining authority on 12-3-2003 and same has been decided by the State Government on 24-3-2003. However, decision of his representation has been intimated to the detenu on 10-4-2003 and hence, there is a delay in deciding the representation and communicating the decision to the detenu. Learned AGP has fairly admitted the same. Learned counsel for the petitioner has relied upon the case of Harish Pahwa Vs. State of U.P. and others, AIR 1981 S.C. 1126, more particularly para 3 which runs as under:

> "The representation made by a detenu has to be considered without any delay. The Supreme Court does not look at equanimity upon delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital importance. It is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. Where this is not done the detention has to be declared unconstitutional."

4. In the present case, it appears that the representation dated 4-3-2003 sent by the detenu was forwarded to the State Government on 12-3-2003. It is to be noted that though said representation has been rejected by the State Government on 24-3-2003, same has been communicated to the detenu on 10-4-2003 i.e. after a period of 17 days. No explanation has been putforward by the authority explaining satisfactorily for the delay caused in communicating the decision to the detenu.

5. Since no explanation has been putforth by the concerned authorities for not communicating the decision of rejection of his representation till 10-4-2003, in view of the aforesaid judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained.

6. The petition is allowed. The impugned order of detention dated 25-2-2003 passed against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(R.P.DHOLAKIA,J.)
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